

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Perry Gene Shivley,

Plaintiff,

v.

Wal-Mart Stores, Inc.,
Defendant.

CIVIL ACTION NO. 3:11-1394-CMC

NOTICE OF REMOVAL

Comes now Defendant, Wal-Mart Stores, Inc., by and through its undersigned legal counsel and pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and hereby removes this action from the Court of Common Pleas in and for Richland County, South Carolina, to the United States District Court for the District of South Carolina, Columbia Division, and in support of such removal states as follows:

1. This action was commenced in the Court of Common Pleas, County of Richland, on April 8, 2011, as Case No. 2011-CP-32-01400.
2. Richland County is located within the geographic coverage area of the Columbia Division of the United States District Court for the District of South Carolina, rendering removal to this Court proper under 28 U.S.C. § 1446(a).
3. The events alleged by Plaintiff giving rise to his claim allegedly occurred in Richland County, South Carolina. Accordingly, venue properly lies in the United States District Court for the District of South Carolina, Columbia Division.
4. Defendant first received a copy of Plaintiff's Summons and Complaint in this action on or after May 9, 2011. Thus, Defendant's Notice of Removal is timely pursuant to 28

U.S.C. § 1446(b), as Defendant is filing the same within 30 days of “receipt by the Defendant[s], through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

5. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendant are attached hereto as Exhibit 1.

6. In accordance with 28 U.S.C. § 1446(d), Defendant will promptly give written notice of the filing of this Notice of Removal to Plaintiff, the only adverse party, and will also file a Notice of filing this Notice of Removal with the Court of Common Pleas in and for Richland County, South Carolina, a copy of which is attached hereto as Exhibit 2.

Diversity Jurisdiction

7. This action is properly removable to federal court pursuant to 28 U.S.C. § 1441(a) based on the diversity of the parties.

8. According to Plaintiff’s Complaint, Plaintiff is a citizen and resident of Lexington County, South Carolina. Wal-Mart Stores, Inc., is a Delaware corporation with its principal place of business in Bentonville, Arkansas. See Affidavit attached hereto as Exhibit 3.

9. This action is properly removable to federal court based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). This Court has original jurisdiction over this civil action because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity of citizenship between the parties.

10. According to Plaintiff’s Complaint, he is seeking damages, lost wages, reinstatement, and such other relief the Court deems just and proper.

11. Although Defendant contends that Plaintiff is not entitled to any damages, a review of Plaintiff's Complaint and the nature of Plaintiff's alleged damages demonstrate the amount in controversy in actuality exceeds \$75,000.00 exclusive of interest and costs.

12. Therefore, removal is appropriate pursuant to 28 U.S.C. § 1441.

WHEREFORE, on the basis of the foregoing, Defendant respectfully submits that removal of this action from the Court of Common Pleas in and for Richland County, South Carolina, to this Court is proper.

Dated this the 8th day of June, 2011.

Respectfully submitted,

s/Kristin S. Gray
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Kristin S. Gray, hereby certify that a copy of the foregoing Notice of Removal has been served upon Plaintiff by placing a copy of the same in the United States Mail, certified mail, return receipt requested, with the correct amount of postage affixed thereon and properly addressed to:

C. Lawrence Simons, III
The Simmons Law Office, P.A.
P.O. Box 5206
West Columbia, SC 29171

Dated this the 8th day of June, 2011.

s/Kristin S. Gray

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